SUPREME COURT
FILED
MAY 29 2003

No. 03 183

IN THE

Supreme Court of the United States

JESSE WOODROW SHOTTS,
Petitioner,

v.

MICHAEL RASMUSSEN, alias Mr. Mike, et al.,
Respondent.

ON PETITION FOR A WRITE OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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15 pp

QUESTION PRESENTED FOR REVIEW

Are federal prosecutors and federal co-conspirators entitled to absolute immunity for constitutional violations of prisoner rights and retaliating against prisoners for accessing court?

PARTIES TO PROCEEDING

MICHAEL RASMUSSEN, alias Mr. Mike;
YVONNE ALEXANDER;
RON MOSES;
RODNEY ROBINSON;
CYNTHIA MCGOUGH;
DR. LUIS A. BERRIOS;
JENNIFER MERKLE;
LARRY SPENCER;
ERIC DRYDEN;
DEBRA RANKIN;
RANDY STILES;
MS. BLANKENSHIP;
Lt. W. HUTCHINGS;
C. THOMPSON, alias Black Widow;
DR. GEORGE HILL;
HONORIO DELA CRUZ;
ART DIZON;
WARDEN R. WILEY; and
DR. CARLA THOMAS.

STATEMENT PURSUANT TO RULE 29.6

There is no publicly held company involved in this litigation.

TABLE OF AUTHORITIES

CASES

Buckley v. Fitzsimmons,
509 U.S. 259.....2, 3

Cruz v. Beto,
405 U.S. 319, 31 L.Ed.2d, 263, 92 S.Ct. 1079.....2, 3

Farmer v. Brennan,
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Hudson v. McMillan,
503 U.S. 1, 8 (1982).....3

Mitchell v. Forsyth,
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Rhodes v. Chapman,
452 U.S. 337, 346 (1981).....3

Whitley v. Albers,
475 U.S. 312, 319 (1986).....3

CONSTITUTION AND STATUTES

U.S. Const., Amend., I ..... passim

U.S. Const., Amend., V ..... passim

U.S. Const., Amend., VIII ..... passim

28 U.S.C. § 1254 1

PRIOR OPINIONS

The opinion of the District Court of the Northern District of Alabama is unreported and is reproduced in the Appendix at App. 1. The opinion of the Court of Appeals for the Eleventh Circuit is unreported and is reproduced at App. 4.

JURISDICTION OF THIS COURT

The Opinion of the Court of Appeals was filed on February 28, 2003.

This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL ISSUES INVOLVED

U.S. Const., Amend. I., V., and VIII provides, in relevant part:

I. To petition the government for a redress of grievances.

V. Nor be deprived of life, liberty, or property without due process of law.

VIII. Nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Appellant appealed his criminal convictions which is reported at 145 F.3d 1289 and the court reversed the mail fraud conviction and ordered a new sentence. Appellant reported to the BOP, the Talladega Prison Camp and received a severe back injury while working in violation of his work limitations. After subpoenaing the medical records and medical personnel for the re-sentencing, the prison authorities placed the appellant in SHU.

While incarcerated, the medical staff refused to treat the severe back jury and sent numerous letters denying the severity of the injury, including a letter to the prosecutor to be used at re-sentencing.

On appeal, the Court of Appeals for the Eleventh Circuit affirmed the decision.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT CERTIORARI TO CORRECT A DECISION THAT ESTABLISHES ABSOLUTE IMMUNITY FOR FEDERAL GOVERNMENT OFFICIALS CONTRARY TO CONSTITUTIONAL PRECEDENT OF THE SUPREME COURT.

The complaint has multiple federal employee defendants for multiple violations of clearly established constitutional rights. The previous decisions were based upon the determination that the plaintiff could not overcome the various immunities that the defendants possess, thus placing federal defendants on a plateau that is not obtainable for liability and creating absolute immunity by practice for all "Bivens" actions. The complaint set forth the violations by separate groups and affixed as exhibits documentation that proved the violations by a preponderance of the evidence. The activity of Assistant United States Attorney Michael Rasmussen and Probation Officers Cynthia McGough and Yvonne Alexander was investigative and or administrative and not protected by absolute immunity, nor qualified immunity, see Mitchell v. Forsyth, 472 U.S. 511, and Buckley v. Fitzsimmons, 509 U.S. 259. The retaliations of Rasmussen, McGough and Alexander for access to the court is a violation of clearly established constitutional rights of which a reasonable person would have known, see Harlow v. Fitzgerald, 475 U.S 800 and Cruz v. Beto, 405 U.S. 319, 31 .Ed.2d, 263, 92 S.Ct. 1079; and absolute nor qualified immunity would protect them from liability for their conduct. Not only did these defendants conspire to deny a transfer to Community Correction Facility, they also retaliated against the plaintiff for having appealed his convictions and gotten

a reversal on several counts. See Cruz v. Beto, 405 U.S. 319, 31 L.Ed.2d, 263, 92 S.Ct. 1079.

This court has prohibited the fabrication of evidence and testimony for many years and the prior decision allows absolute immunity for defendants Berrios, Merkle, Wiley, Dela Cruz and Dizon for the fabrication of testimony and assistance in preparing testimony. This is contrary to Buckley v. Fitzsimmons, 509 U.S. 259. While giving testimony is entitled to absolute immunity, the preparation of fabricated testimony is not protected by immunity and the individuals are not entitled to absolute nor qualified immunity.

The medical staff at Talladega Prison Camp fraudulently communicated the medical condition of the plaintiff to the warden and the Assistant United States Attorney. After the chief medical person was exposed by the plaintiff, the plaintiff was placed in the Segregated Housing Unit and forced to sleep on a concrete floor (all the medical staff was aware that the plaintiff has suffered a herniated disc while working at Talladega), causing the unnecessary and wanton infliction of pain in violation of clearly established constitutional rights that a reasonable official would understand that he is violating that right.

" '[T]he unnecessary and wanton infliction of pain...constitutes cruel and unusual punishment forbidden by the Eighth Amendment.' " Whitley v. Albers, 475 U.S. 312, 319 (1986) (some internal quotation marks omitted). We have said that "[a]mong 'unnecessary and wanton' inflictions of pain are those that are 'totally without penological justification.' " Rhodes v. Chapman, 452 U.S. 337, 346 (1981). In making this determination in the context of prison conditions, we must ascertain whether the officials involved acted with "deliberate indifference" to the inmates' health or safety. Hudson v. McMillan, 503 U.S. 1, 8 (1982). We may infer the existence of this subjective state of mind from the fact that the risk of harm is obvious. Farmer v. Brennan, 511 U.S. 825, 842 (1994).

To allow the "Bivens" defendants absolute immunity would return our legal system to the 19th Century. The United States has become a beacon for the World in Human Rights to allow a federal official to commit any corrupt act without accountability would tarnish that image.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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(205) 322-5800

Counsel of Record

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JESSE WOODROW SHOTTS	}	
	}	
Plaintiff,	}	
	}	CIVIL ACTION NO.
v.	}	02-AR-1343 -S
	}	
MICHAEL RASMUSSEN, et al.,	}	
	}	
Defendants.	}	

MEMORANDUM OPINION

To memorialize the oral rulings announced on September 19, 2002, during argument on all then pending motions except the motion for summary judgment filed by Keeton Corrections, Inc., the second motion to amend filed on September 19, 2002, by plaintiff, Jesse Woodrow Shotts ("Shotts"), was granted, the complaint, as thus amended, was deemed filed, and all defendants' motions to dismiss were deemed re-filed, addressed to the complaint as last amended. The argument proceeded on that basis.

Shotts sues a number of defendants under *Bivens,* 42 U.S.C. §1983, 42 U.S.C. § 1985, and the Racketeer Influenced and Corrupt Organizations Act ("RICO"). The alleged conspiracy and varied sub-events complained of occurred while Shotts was a federal prisoner under judgment for a felony conviction in this court. The defendants include a federal prosecutor, two probation officers of this court, federal prison medical personnel, and federal correctional officers. That these loosely related defendants somehow got together and formed a conspiracy to deny Shotts various of his Constitutional rights is difficult to conceive of, but the court supposes that it is theoretically possible. Unfortunately Shotts, his invocation of § 1983, § 1985 and RICO are clearly

inapposite. These statutes simply do not fit the factual allegations of his complaint, no matter how tolerantly construed. This leaves him with *Bivens,* which he invoked for the first time on September 19, 2002.

It goes without saying that if defendants, or any of them, deliberately undertook to persecute or to mistreat Shotts because of the partially successful appeal of this conviction, it would be a shameful act. But, the motions to dismiss only call for the court to ascertain whether or not Shotts' has stated a claim upon which he can proceed in this court and upon which any of the relief he seeks can be granted. The court is not called upon to conduct a broad investigation of prison conditions and procedures.

There is so much wrong with Shotts' shotgun complaint that the court chooses not to try to analyze it or to criticize it paragraph by paragraph. In all of its convoluted aspects it attempts to combine in one act ion every complaint about every person who did something that Shotts did not like during his incarceration, whether physical or procedural. Shotts is angry. However, insurmountable obstacles in Shotts' path are the judicial, prosecutorial, sovereign and qualified immunities enjoyed in varying degrees by the various defendants. Without repeating the points articulated in defendants' motions to dismiss, they are well taken, and for the reasons therein stated and discussed during oral argument, the said motions are due to be granted and will be granted by separate order. A lengthy opinion would add nothing but insult to the alleged injuries sustained by Shotts.

DONE this 26th day of September, 2002.

WILLIAM M ACKER, JR.
UNITED STATES DISTRICT JUDGE

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-15904
Non-Argument Calendar

D. C. Docket No. 02-0 1 343-CY-AR-S

JESSE. WOODROW SHOTTS,

Plaintiff-Appellant,

versus

KEETON CORRECTIONS, INC.,

Defendant,

MICHAEL RASMUSSEN, a/k/a. Mr. Mike,
GEORGE HILL, Dr., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(February 28. 2003)

Before CARNES, WILSON and COX, Circuit Judges.
PER CURIAM:

Shotts appeals the district court's dismissal of his claims brought under 42 V.S.C. § 1983,42 V.S.C. § 1985, 18 V.S.C. § 1962 (RICO), and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 9 I S. Ct. 1999 (1971). Shotts, a former attorney currently incarcerated for witness tampering, bases his § 1983 and *Bivens* claims on alleged violations of his First Amendment, Fifth Amendment, and Eighth Amendment rights. The named defendants include the United States of America, numerous federal employees (an Assistant United States Attorney, two federal probation officers, a legal advisor to the federal Bureau of Prisons, a former warden at the Talladega Federal Correctional Institution, and thirteen BOP employees), two non-federal employees, and one non- federal entity (Keeton Corrections, Inc.).

Having reviewed the complaint and the briefs, we agree that the factual allegations set forth in Shotts's complaint clearly fail to set forth any claim under § 1983, § 1985 and RICO, and these claims do not warrant discussion. Turning to Shotts's *Bivens* claims against the federal defendants, we conclude that Assistant United States Attorney Rasmussen and Probation Officers McGough and Alexander are entitled to immunity. *See Elder v. Athens-Clarke County, Georgia Through O'Looney,* 54 F.3d 694, 695 (11th Cir. 1995); *Spaulding v. Nielsen,* 599 F.2d.728, 729 (5th Cir. 1979). Likewise, Berrios, Merkle, Wiley, Del a Cruz, and Dizon are entitled to immunity for their testimonial acts and their assistance in preparing testimony. *Scarbrough v. Myles,* 245 F.3d 1299, 1305 (11th Cir. 2001); *Jones v. Cannon,* 174 F.3d 1271, 1288-89 (11th Cir. 1999). Contrary to Shotts's argument,it was entirely appropriate for the district court to dismiss these claims on immunity grounds pursuant to a 12(b)(6) motion. *See, e.g., Long v. Satz,* 181 F.3d 1275, 1279 (11th Cir. 1999).

Because the federal defendants might be entitled to qualified immunity with respect to the other alleged constitutional violations that underlie Shotts's *Bivens* claims, Shotts must satisfy our requirement of heightened specificity in pleading civil rights actions against public officials. *Magluta v. Samples,*

256 F.3d 1282, 1284 (11 th Cir. 2001). We agree with the defendants that most of Shotts's allegations fail to satisfy the heightened pleading requirement, and even those allegations that might satisfy the requirement fail to sufficiently allege constitutional violations. Accordingly, we affirm the district court's order granting the defendants' motions to dismiss.

AFFIRMED.